

Testimony of G. William Myers, PE, JD
Senior Vice President and General Counsel
L. Robert Kimball & Associates, Inc.
Before the Lobbying Disclosure Regulations Committee
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Introduction

Mr. Chairman and members of the committee, my name is Bill Myers. I am general counsel for L. Robert Kimball & Associates, Inc., founded in 1953 and headquartered in Ebensburg, Cambria County, Pennsylvania. Kimball is a firm of architects, engineers, environmental scientists, geologists, interior designers, surveyors, and related professional and support staff that design public work projects for state and local governments in Pennsylvania and its neighboring states. Kimball currently has approximately 600 employees, of which 580 are located in Pennsylvania. Kimball's other Pennsylvania Offices are in Coraopolis, Harrisburg, Philadelphia, Pittsburgh, State College, West Chester, and Wilkes-Barre.

Summary

I am here today to urge that two subsections of the proposed regulations be better defined or refined so that general counsels, as well as other attorneys, representing companies that are registered as Principals under the Lobbying Disclosure Act may be guided in how to comply with the Act.

They are Subsection 55.1 (g) (5), which is in the Reporting Section; and Subsection 57.2 (a) (5), which is in the Exemptions from Registration and Reporting Section.

Problem with Section 55.1 (g) (5)

The current version of 55.1 (g) (5) requires that a Principal's quarterly expense report include the name, etc., of any individual, etc., which "contributed" more than 10% of the total "resources" received by the principal during the reporting period.

The problem with Regulation 55.1 (g) (5), which is the same problem as with the underlying statute, 65 Pa. Stat. § 13A05 (b) (5), is that the words "contributed" and "resources" are not defined.

I suspect that the corresponding section of the Act was intended to address non-business entities, which solicit contributions to fund their activities, versus businesses, which sell goods or services.

What do the words “contributed” and “resources” mean in the context of a Principal, which is a general business corporation?

Does it mean something given to the Principal without receiving back something of equivalent value like a campaign or charitable contribution?

Or, does it mean the Principal’s primary banks or lenders?

Or, does it mean the Principal’s equity stockholders?

Or, does it mean the Principal’s primary clients?

These regulations need to have definitions for “contribution” and “resources” added to make clear what is intended in the context of this reporting requirement.

Problem with Section 57.2 (a) (5)

The current version of 57.2 (a) (5) states that the exemption in the Act from registering as a “lobbyist” is limited to an individual who engages in “lobbying” on behalf of the individual’s employer if the “lobbying activity”¹ represents less than 20 hours during any reporting period.

The problem with Section 57.2 (a) (5), which is the same problem as with the underlying statute, 65 Pa. Stat. § 13A06 (5), is that the word “lobbying” in the regulation and the statute is over inclusive in relation to this particular provision because if interpreted literally it means that administrative and support staff would have to be registered as lobbyists if they exceed 20 hours per quarter in “lobbying” effort.

The issue is what hours count toward this 20-hour per quarter threshold?

I first raised this issue through hypothetical questions at the January 19, 2007 Pennsylvania Bar Institute seminar on the new Act.

I also handed the same or similar hypothetical questions to Mr. Masland on February 15th when I was here for the hearing that was cancelled that day due to inclement weather; and then sent these same hypothetical questions to Mr.

¹ Is “lobbying activity” something different than lobbying? If it is the regulatory intent that “lobbying activity” mean something different than “lobbying,” then “lobbying activity” needs to be defined in the regulations more narrowly than “lobbying.”

Masland in electronic form on February 20th. These hypothetical questions are attached.

Do only some sort of direct communications² count toward the 20-hours per quarter? But, there is no such narrow definition of lobbying in the Regulations.

Or, if all time counts, then won't Principals have to register their research and monitoring staff, consultants, publications and public relations staff, technical staff, clerical and administrative support staff as lobbyists if any of their effort exceeds 20 hours per quarter?

And, this is even if these staff members have never met nor will ever meet with any State Officials or employees in the normal course of business.

When I discuss this with issue with others, they say the answer is simple. Only the "lobbyists" need to be registered who exceed 20 hours per quarter.

The problem is who are the "lobbyists?"

By regulatory definition a "lobbyist" is an individual who engages in "lobbying." While at first blush this makes sense, when one looks at the definition of "lobbying" the problem becomes clearer.

The regulatory definition of "lobbying" is very broad and includes any effort to influence legislative or administrative action, including "direct communications," indirect communications and office expenses.

"Direct communications" include "personnel expenses," which in turn include expenditures for salaries of "lobbyists,"³ "lobbying staff, research and monitoring staff, consultants, publications and public relations staff, technical staff, clerical and administrative support staff."

The term "lobbying" thus includes many individuals other than "lobbyists," using the more narrow definition of a "lobbyist" as a person who directly communicates with State Officials or employees." As a result, research and monitoring staff, consultants, publications and public relations staff, technical staff, clerical and administrative support staff are also "lobbyists" because they are "lobbying" as that term is so broadly defined.

I believe to remedy this situation that for me appears in applying Section 57.2 (a) (5), and may appear for others in applying other parts of the Regulations, is that

² For example, face-to-face meetings, telephone conversations, email exchanges, and correspondence.

³ Note in the definition of "direct communications" the regulations apparently differentiate between "lobbyists" and their support staff, but as "lobbyists" are defined, there is really no difference because they all engage in "lobbying" as it is broadly defined.

there needs to be a definition for an “actual lobbyist” that defines that person in a more classical sense along the lines of one who directly communicates⁴ with state officials and employees for lobbying purposes. Otherwise, there is no logical way to differentiate between the different individuals who are “lobbying” as broadly defined in the Regulations.

Maybe that was the original intent when the term “direct communications” was developed. By including “personnel expense,” however, as part of the definition of “direct communications,” the definition of “direct communications” was broadened to include individuals who are not actually involved in direct communications with State Officials and Employees. This inclusion is what causes the problem that concerns me.

Perhaps a solution can be found within the Interim Guidelines for Accounting and Reporting – How to Comply with Act 134 of 2006, adopted May 30, 2007. In Section VII—Calculation of Direct Communication (page 11, fourth paragraph, first sentence) it is stated as follows:

The action that triggers the expense reporting may be in any form and includes a personal visit, a telephone call, an email or a letter to a state official or employee by a registered lobbyist or principal where the purpose or foreseeable effect is to influence legislative or administrative action.

It seems to me that the amount of time spent on these types of activities (a personal visit, a telephone call, an email or a letter to a state official or employee) would form suitable measure for what is “actual lobbying,” and thus define what time counts towards the 20 hours per quarter. Principals would then have a proper metric that could be communicated to its staff and tracked against the 20 hour criteria.

Conclusion

I don’t think these regulations should be issued until the problems discussed with Section 55.1 (g) (5) and Section 57.2 (a) (5) are remedied.

Thank you for the opportunity to address these issues with the Committee.

I would be happy to respond to any questions.

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⁴ For example, face-to-face meetings, telephone conversations, email exchanges, and correspondence.

Hypothetical Questions focused on Section 1306-A [Exemption from registration and reporting] and in particular exemption 1306-A(5) [an individual who engages in lobbying on behalf of the individual's employer if the lobbying represents less than 20 hours during any reporting period].

General Issue Raised: What kind or type of "Lobbying" efforts (hours) count toward the 20 hour per quarterly reporting period parameter? In other words, do all hours that are reportable as "Personnel Expense" [§ 1303-A] under the Act also count toward the 20 hour threshold as to who is a "Lobbyist" under the Act.

Hypothetical Questions: Employee A spends less than 20 hours (approximately 15 hours) per quarterly reporting period actually meeting ("face time" or "contact time") with State officials and employees. Employee A spends no additional time preparing for these meetings. Is Employee A a "Lobbyist" under the Act.

Employee B never actually meets with State officials and employees but spends much more than 20 hours per quarterly reporting period assisting Employee A by doing research and drafting presentation materials. Is Employee B a "Lobbyist" under the Act?

Employee C spends much less than 20 hours (approximately 2 hours) per quarterly reporting period actually meeting ("face time" or "contact time") with State officials and employees. Employee C, however, spends a substantial amount of time (well in excess of 20 hours per quarterly reporting period) preparing to meet with State officials and employees researching and drafting presentation materials. Is Employee C a "Lobbyist" under the Act?

Issue Re-visited: If all "effort [hours] to influence legislative action or administrative action" [§ 1303-A] count toward the 20 hour threshold,⁵ then Employee B, who never meets with State officials and employees, and Employee C, who only meets with State officials and employees two hours per quarterly reporting period would be deemed "Lobbyists" under the Act.

If, however, the only "effort [hours] to influence legislative action or administrative action" [§ 1303-A] that count toward the 20-hour threshold is "face time" or "contact time," then the 20 hour threshold is only crossed by employees who actually meet with State officials and employees 20 or more hours per quarterly reporting period,⁶ which seems to make sense and is a clearer metric to track for employers.

Request: This is an important issue faced by employers in determining whether any of its employees are "Lobbyists" under the Act and should be squarely addressed in the regulations.

⁵ This was the view expressed by Mr. Harhut during a telephone conversation discussing this issue in January.

⁶ This was the view expressed by Ms. Hittie during the January 19, 2007 PBI seminar.